

09/554,793
RDID 0043 US

REMARKS

Claims 2-5 and 7, and 9-34 are pending in the application. Claims 9, 16, 17, and 26 are independent claims.

Claims 17-34 are added herein. Support for the new claims is found throughout the specification, the claims as originally filed, and the drawings. Particularly, support is found at page 10 line 11 to page 13 line 2, page 11 second paragraph, and Figures 1-2. No new matter is added by virtue of the new claims.

Claim 17 recites a device for withdrawing samples of liquid samples for analytical elements. The device comprises a carrier, a detection element having opposite first and second ends, the first end being positioned adjacent to the carrier, and a cover having a surface that cooperates with a surface of the carrier and the detection element to form a capillary-active channel. The channel has a sample application opening defined by at least one edge and extends at least from the opening to the second end of the detection element. At least one notch in the form of a partial groove is positioned at the at least one edge of the sample application opening of the channel so that one side of the edge of the sample application opening is at least partially interrupted by the at least one notch and the surface facing the channel opposite to the at least one notch is exposed. Claims 18-25 depend from new independent claim 17.

Claim 26 recites a device for withdrawing samples of liquid samples for analytical elements. The device comprises a carrier and a cover having a surface that cooperates with a surface of the carrier to form a capillary-active channel. The channel has a sample application opening defined by at least one edge. At least one notch in the form of a partial groove and having a width less than the channel's width is positioned at the at least one edge of the sample application opening of the channel so that one side of the edge of the sample application opening is at least partially interrupted by the at least one notch and the surface facing the channel opposite to the at least one notch is exposed. Claims 27-34 depend from independent claim 26.

Claims 2-5, 7, 9-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The rejection proffers that it is unclear how the partial groove extends into the edge. Claims 9 and 16 each been amended to change the language "extends into" to "is positioned at". Support for the amendment is found in the specification and drawings and particularly at page 4, the last paragraph and in Figure 2. No new

09/554,793
RDID 0043 US

matter is added by virtue of the amendment. The phrase "positioned at" is believed to be sufficiently clear for purposes of 35 U.S.C. 112, second paragraph.

Reconsideration of the rejection in light of the claims leading to withdrawal of the rejection and allowance of the claims is respectfully requested.

Claims 2-5, 9-14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,399,316 to Yamada.

Claims 9 and 16 have been amended to recite a detection element that cooperates with the cover to form a channel and to further clarify that the at least one notch has a width less than that of the channel. Support for the amendments is found in the specification and drawings and particularly at page 10, line 12 and in Figures 1a-1g and 2. No new matter is added by virtue of the amendments.

Yamada discloses a reaction vessel 10 with a base member 11, spacers 12, 13 spaced apart forming a groove 14, and a cover 17 having a U-shaped notched portion 15 having a width larger than that of the groove 14. See, Column 4 lines 60-67. The notched portion, base member 11 and spacers 12 and 13 define an injection region 22. See, Column 5 lines 9-10.

As discussed above, claims 9 and 16 have each been amended to recite a detection element having opposite first and second ends, the first end being positioned adjacent to the carrier, and a cover having a surface that cooperates with a surface of the carrier and the detection element to form a capillary-active channel, the channel having a sample application opening defined by at least one edge, the channel extending at least from the opening to the second end of the detection element.

It is respectfully submitted that the reaction vessel 10 of Yamada lacks a detection element. Further, Yamada fails to disclose or suggest a detection element adjacent to the carrier that cooperates with the cover to form a capillary-active channel, as recited by claims 9 and 16.

Additionally, it is noted that the notched portion 15 of the Yamada device is so large that it not only exposes the capillary gap, but also a wide area of the spacer 13. This is in accordance with the function of this device of Yamada, which requires the application of relatively large sample volumes and the withdrawal of fluid from the capillary gap via the absorbent member 28.

As such, it is submitted that Yamada not only fails to anticipate amended claims 9 and 16, but it also teaches away from said claims. Accordingly, it is submitted that the claims are not anticipated and are believed to be patentable over

09/554,793
RDID 0043 US

Yamada. Reconsideration of the rejection, leading to its withdrawal is respectfully requested.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,399,316 to Yamada in view of U.S. Patent No. 4,439,526 to Columbus.

Details regarding Yamada have been discussed above with reference to amended claim 9. Columbus et al. discloses a device having an exterior surface for receipt of liquid deposited and a wall means interior of the surface for transporting liquid by capillary attraction along a passage. See, Column 2, lines 29-33. Columbus fails to cure the inadequacies of Yamada in relation to amended claim 9. Claim 2 depends from amended claim 9.

It is respectfully contended that the differences between the claimed invention and the cited art are such that Applicant's invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Reconsideration of the rejection of the claims and withdrawal of the rejections leading to allowance of the claims is respectfully requested.

Claims 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,399,316 to Yamada in view of U.S. Patent No. 6,238,624 to Heller et al.

Details regarding Yamada have been discussed above with reference to amended claim 9. Heller et al. disclose a self-addressable, self-assembling microelectronic device designed and fabricated to actively carry out and control multi-step and multiplex molecular biological reactions in microscopic formats. See, the abstract. Heller et al. fail to cure the inadequacies of Yamada in relation to amended claim 9. Claims 7 and 15 depend from amended claim 9.

It is respectfully contended that the differences between the claimed invention and the cited art are such that Applicant's invention as a whole would not have been obvious to one of ordinary skill in the art at the time the invention was made. It is respectfully contended that the claimed invention meets the test of patentability under 35 U.S.C. 103(a). Reconsideration of the rejections of the claims and withdrawal of the rejections leading to allowance of the claims is respectfully requested.

This application is deemed to be in condition for allowance and as such is respectfully requested. In addition, if necessary, it is requested that this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response

09/554,793
RDID 0043 US

and fees be charged to Deposit Account No. 50-0877 (with reference to RDID 0043 US).

Respectfully submitted,

Date: Sept. 23, 2003

Jill L. Woodburn

Jill L. Woodburn, Reg. No. 39,874
The Law Office of Jill L. Woodburn, L.L.C.
128 Shore Dr.
Ogden Dunes, IN 46368-1015
Telephone No.: 219-764-4005
Facsimile No.: 219-764-4070

RECEIVED
CENTRAL FAX CENTER

SEP 24 2003

OFFICIAL